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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,486	03/10/2004	Matthew A. Smith	JK01261	3302
28268	7590	01/18/2007	EXAMINER	
THE BLACK & DECKER CORPORATION			NGUYEN, PHONG H	
701 EAST JOPPA ROAD, TW199			ART UNIT	PAPER NUMBER
TOWSON, MD 21286			3724	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/797,486	SMITH ET AL.
	Examiner Phong H. Nguyen	Art Unit 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 October 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 20, 30, 31 and 35-51 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6, 8-13, 17-19, 21-28 and 32-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claim 36 belongs to the non-elected species. Therefore, it is withdrawn from consideration.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-13, 17-19, 22-28, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gass et al. (US Pub. 2002/0017175 A1), hereinafter Gass, in view of Ghosh et al. (5,436,613), hereinafter Ghosh.

Gass teaches a power tool comprising a working element for performing a task on a workpiece, a brake system 28 and a detecting system for detecting a portion of a user's body coming too close to the working element.

Ghosh teaches the use of an infrared detecting system. See col. 1, lines 24-33. Therefore, it would have been obvious to one skilled in the art to incorporate the infrared detecting system as taught by Ghosh to the Gass' power tool to protect tool operators.

It is to be noted that the light beam creates a visual indication of a detection zone.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gass in view of Ghosh, as applied to claims 8 and 23 above, and further in view of Lange et al. (US Pub. 2003/0169956 A1), hereinafter Lange.

The modified power tool of Gass teaches the invention substantially as claimed except for the light source and the detector being configured as a fiber optic probe.

Lange teaches the common use of fiber optics. See paragraph [0004]. Therefore, it would have been obvious to one skilled in the art to configure the light source and the detector as a fiber optic probe to improve the quality of the light source and the detector.

***Response to Arguments***

5. Applicant's arguments filed 10/23/2006 have been fully considered but they are not persuasive.

The Applicant argues that Ghosh does not teach how the infrared systems detect human presence, or how such system is structured. This argument is not persuasive. The Applicant does not claim how the infrared systems detect human presence, or how such system is structured. Therefore, Ghosh reads on the claim language.

The Applicant argues that Ghosh teaches away from using infrared systems as evidenced in col. 2, lines 66-68. This argument is not persuasive. Ghosh teaches many available detection systems of human presence which includes the infrared system. Choosing an available system to meet the cost and the need of one skilled in the art is routine skill. Therefore, it would have been obvious to one skilled in the art to select the infrared system from the Ghosh's list.

Furthermore, Ghosh's statement that prior art devices are incapable of discriminating between a human and an inanimate is for the capacitive detection systems but not for the infrared systems. Therefore, the Applicant's argument is not persuasive.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

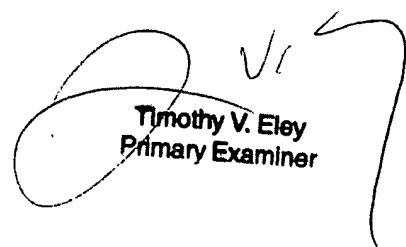
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H. Nguyen whose telephone number is 571-272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN: *TM*

December 29, 2006



Timothy V. Eley  
Primary Examiner